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In The  
**SUPREME COURT OF THE UNITED STATES**

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**WILLIAM NIKLAUS, MARY V. NIKLAUS AND LOUP  
RIVER PUBLIC POWER DISTRICT, A CORPORA-  
TION, PETITIONERS,**

**V.**

**THE LINCOLN JOINT STOCK LAND BANK, OF LIN-  
COLN, NEBRASKA, A CORPORATION, RESPONDENT.**

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**PETITION FOR REHEARING ON ORDER DENYING  
PETITION FOR WRIT OF CERTIORARI, AND  
SUPPORTING BRIEF**

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**HERBERT W. BAIRD,**  
*Counsel for Petitioners.*

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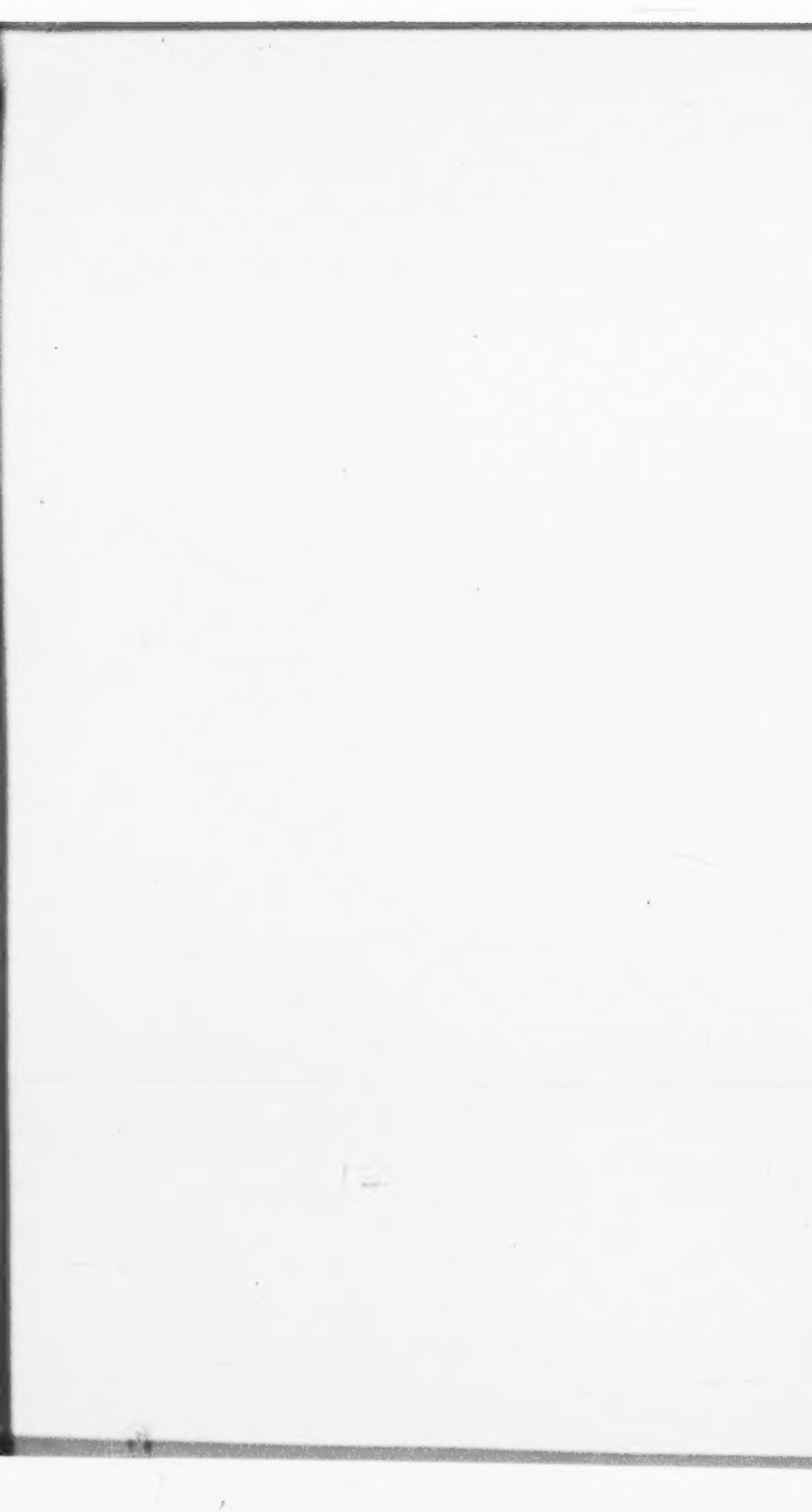
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*Counsel for Petitioners.*

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**PETITION FOR REHEARING ON ORDER DENYING  
PETITION FOR WRIT OF CERTIORARI.**

*To the Honorable, the Chief Justice and Associate  
Justices of the Supreme Court of the United States of  
America:*

The petition of William Niklaus, Mary V. Niklaus and  
Loup River Public Power District respectfully shows:

Petitioners seek a rehearing or reconsideration of the  
order of this court entered on the 8th day of November,  
1943, denying petitioners writ of certiorari to the Supreme  
Court of Nebraska, for the following reasons, to-wit:

1. The petition for writ of certiorari herein shows that the State of Nebraska, acting through its judiciary, has disregarded the prohibitions of the 14th Amendment of the Constitution of the United States in two particulars, to-wit:

(a) Has deprived the petitioners of their property by a judgment made by a court without jurisdiction.

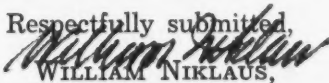
(b) Has deprived the petitioners of their property and applied the same on the extinguished claim of the respondent.

Under such circumstances this court is required to grant the writ and pass upon the merits of petitioners' claim.

The authorities in support of this petition are cited and discussed in a supporting brief hereto attached.

Wherefore your petitioners pray that this Honorable Court reconsider the petition for writ of certiorari, revoke the order denying the same, grant the writ as prayed in the petition to the end that the judgment of the Supreme Court of Nebraska may be reviewed and reversed by this Honorable Court.

Respectfully submitted,



WILLIAM NIKLAUS,

MARY V. NIKLAUS,

LOUP RIVER PUBLIC POWER DISTRICT,

By HERBERT W. BAIRD,  
Their Attorney.

## SUPPORTING BRIEF.

*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioners respectfully show:

### STATEMENT OF THE CASE.

Petitioners submit the within brief in support of their petition seeking a rehearing or reconsideration and revocation of the order of this court denying petitioners writ of certiorari to the Supreme Court of Nebraska, said order entered November 8, 1943.

The case is stated in the supporting brief attached to the petition for writ of certiorari.

### ARGUMENT.

#### Point A

**Where a State by Any of Its Agencies Disregards the Prohibitions of the 14th Amendment, This Court, Upon Petition for Writ of Certiorari, is Required to Pass Upon the Merits of Petitioners' Claim.**

Under Points A, B, C, and D of the supporting brief, petitioners have shown that they were deprived of their property through and by virtue of a judgment made by a court without jurisdiction. In *Scott v. McNeal*, 154 U. S. 34, 36, 38 L. Ed. 896, 902, this court held that a judgment without jurisdiction in the court is not due process of law.

Under Point E of the supporting brief, petitioners have shown that the court below arbitrarily and capriciously deprived the petitioners of their property and appropri-

ated the same to the extinguished claim of the respondent.

In *Stewart v. Keyes*, 295 U. S. 403, 417, 79 L. Ed. 1507, 1516, this court held that the owner of land has a substantive right in the completed bar of the statute of limitation against claims for the recovery of the land. In the opinion this court said:

"As respects suits to recover real or personal property where the right of action is barred by the statute of limitations and a later act has attempted to repeal or remove the bar after it had become complete, the rule sustained by reason and preponderant authority is that the removing act cannot be given effect consistently with constitutional provisions forbidding a deprivation of property without due process of law. 'The reason is,' as this court has said, 'That by the law in existence before the repealing act the property had become defendants. Both the legal title and the real ownership had become vested in him and to give the act the effect of transferring this title would be to deprive him of his property without due process of law.'"

The only distinction between the above cited case and the case at bar is that in the latter the judiciary attempted to remove the bar of the statute by interpolation of facts de hors the record. While in the former the attempt was made by the legislature.

In both cases the state through its agency disregarded the prohibitions of the 14th Amendment.

In the case of *Georgia Power Co. v. Decatur*, 281 U. S. 505, 508, 74 L. Ed. 999, 1003, this court said:



"The state may not by any of its agencies disregard the prohibitions of the 14th amendment. \* \* \* *We are therefore required to pass upon the merits of petitioners' claim.*"

In the case of *Ward v. Love*, 253 U. S. 17, 22, 64 L. Ed. 751, 758, this court said with reference to a right claimed under the 14th Amendment and denied by the state court of last resort:

"The county challenges our jurisdiction by motion to dismiss the Writ of Certiorari, and by way of supporting the motion insists that the Supreme Court put its judgment entirely on independent non-Federal grounds which were broad enough to sustain the judgment. - - - Whether the right was denied, or not given due recognition, by the Supreme Court, is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way. *It is therefore within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-Federal grounds of decision that were without any fair or substantial support.*"

### Point B

**It is the Constitutional Duty of This Court to Maintain the Supremacy of the Constitution of the United States and to Thwart the Exercise of Arbitrary and Capricious Power Repugnant to the Federal Constitution.**

In the case of *Jones v. Securities Exchange Com.*, 298 U. S. 1, 24, 80 L. Ed. 1015, 1025, this court in passing on the action of a commission, which operated to deprive a citizen of his property without due process of law, said:

"The action of the commission finds no support in right, principle or in law. It is wholly unreasonable and arbitrary. It violates the cardinal precept upon which constitutional safe-guards of personal liberty ultimately rest - - that this shall be a government of laws - - because to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy. Against the threat of such contingency the courts have always been vigilant, and if they are to perform the constitutional duties in the future, must never cease to be vigilant to detect and turn aside the danger at its beginning.

"The admonition of Mr. Justice Bradley in *Boyd v. United States*, 116 U. S. 635, 29 L. Ed. 746, 752 S. Ct. 520, should never be forgotten: 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way namely, by silent approaches and slight deviations from legal modes of procedure - - - It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon. Their motto should be OBSTA PRINCIPIS.'

"Arbitrary power and the rule of the constitution cannot both exist. They are antagonistic and incompatible forces; and one or the other must of necessity perish whenever they are brought into conflict."

In the *Barbier v. Connolly* case, 113 U. S. 27, 28, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357, this court said with reference to right claimed under the 14th Amendment:

"The 14th Amendment, in declaring that no State 'Shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security, should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and their property. \* \* \*"

### Point C

**The Judgment of the Court Below is Based on Non-Federal Grounds of Decision Consisting of Misrepresentations of the Law and the Facts and is Therefore Untenable.**

Respondent, in its answer brief, contends that inasmuch as the judgment of the court below is based on non-Federal grounds of decision, this court is without jurisdiction to review the same, and cites *Brinkerhoff-Farris Trust and Savings Co. v. Hill*, 281 U. S. 673, 680, 74 L. Ed. 1107, in support of its contention.

In the *Brinkerhoff* case, this court, on December 2, 1929, denied the writ of certiorari (280 U. S. 604, 74 L. Ed. 648). On January 30, 1930, upon reconsideration revoked order of denial and granted the writ (250 U. S. 550, 74 L. Ed. 608), and heard the case on its merits, resulting in a reversal of the judgment of the court below. In passing on the merits of the case, this court said:

"But while it is for the state courts to determine the adjective as well as the substantive law of the state, they must in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state had no power to destroy unless there is or was, afforded to him some real opportunity to protect it."

The reasoning in the cited case applies with great force to the situation in the case at bar. The Supreme Court of Nebraska based its decision on the question of the statute of limitations on *facts dehors* the record. *It did not accord to the petitioners due process of law.* It decided the point against them on facts not in issue. Petitioners had no opportunity to deny the facts or admit them and show that they were not sufficient to avoid or suspend the statute. In this respect the State of Nebraska, acting through its judiciary, deprived the petitioners of all existing remedies for the enforcement of their substantive right to the benefit of the completed bar of the statute of limitations.

### Point D

#### **Respondent's Answer Brief Confirms the Petitioners' Statement That This Case is of Public National Importance.**

The matter appearing near the bottom of page 8, respondent's answer brief, demonstrates that a litigant in Nebraska, who dares protest against the arbitrary and capricious practice of the Supreme Court of Nebraska of basing its judgment on facts *dehors* the record, subjects himself to accusations of being in contempt of court.

Unless the case at bar is heard on the merits and reversed, it will be a precedent for the nullification of the 14th Amendment of the Constitution of the United States in Nebraska thus jeopardizing the private rights of every person within the jurisdiction of the state.

If the practice is not stopped through the supervisory power of this court, it will continue unabated.

Wherefore your petitioners pray that this Honorable Court reconsider the petition for writ of certiorari, revoke the order denying the same, grant the writ as prayed in the petition to the end that the judgment of the Supreme Court of Nebraska may be reviewed and reversed by this Honorable Court.

Respectfully submitted,

WILLIAM NIKLAUS,  
MARY V. NIKLAUS,  
LOUP RIVER PUBLIC POWER DISTRICT,

By HERBERT W. BAIRD,  
*Their Attorney.*